

APPROVED MINUTES of the Regular
Meeting of the City Council of the City of Rye
held in City Hall on April 19, 2017, at 7:30 P.M.

PRESENT:

JOSEPH A. SACK Mayor
KIRSTIN BUCCI
EMILY HURD
JULIE KILLIAN
RICHARD MECCA
DANIELLE TAGGER-EPSTEIN
Councilmembers

ABSENT:

TERRENCE McCARTNEY
Councilmember

The Council convened at 6:30 P.M. Councilman Mecca made a motion, seconded by Councilwoman Bucci and unanimously carried to immediately adjourn into Executive Session to discuss litigation and personnel matters. Councilman Mecca made a motion, seconded by Councilwoman Bucci and unanimously carried, to adjourn the Executive Session at 7:55 P.M. The regular meeting convened at 7:59 P.M.

1. Pledge of Allegiance.

Mayor Sack called the meeting to order and invited the Council to join in the Pledge of Allegiance.

2. Roll Call.

Mayor Sack asked the City Clerk to call the roll; a quorum was present to conduct official City business.

11. Authorization for the City Manager to enter into an agreement with BFJ Planning for the completion of a comprehensive update of the City of Rye Master Plan.
Roll Call.

This item was taken out of order. Nick Everett, Chair of the Master Plan Committee, was present at the meeting. Mr. Everett explained that there had been a thorough process to hire a consultant through a request for proposal on the Master Plan. The RFP was sent out nationally, with proposals due February 3, 2017. Three companies were interviewed, and the Committee felt strongly that BFJ Planning was the most appropriate candidate. They are familiar with the City of Rye, having done the central business district study among other items. The firm has done comprehensive plans for Rye Brook, Mamaroneck, Port Chester, Harrison and others. Mr. Everett stated the Committee's formal recommendation was for the City to retain BFJ Planning.

Councilwoman Killian made a motion, seconded by Councilman Mecca, to authorize the City Manager to enter into an agreement with BFJ Planning for the completion of a comprehensive update of the City of Rye Master Plan.

ROLL CALL

AYES: Mayor Sack, Councilmembers Bucci, Hurd, Killian, Mecca, and Tagger-Epstein
NAYS: None
ABSENT: Councilman McCartney

3. **General Announcements.**

Mayor Sack thanked Assistant City Manager Eleanor Militana for her work as Acting City Manager while City Manager Serrano was out.

Councilwoman Killian announced that the Second Annual Rye ACT Town Hall event was scheduled for 7:00 P.M. on May 9, 2017 at Rye High School. The event will feature a presentation on survey results on drugs and alcohol for grades 7-12. There will also be a talk by Dr. Dupont and breakout groups. Councilwoman Killian also announced that the Sustainability Committee has created a Rye Sustainability Committee leadership award. The following individuals have been nominated for the award: Scott Nelson, Rye Country Day School Headmaster, for his consistent and generous support for the green screen films, Christine Siller and Taro Ietaka of the Rye Nature Center, Jim Boylan, Rye Middle School Principal, for implementing a compost program, and Marc Dellicolli, Rye resident and assistant to the Chief Information Officer for the Westchester Department of Information Technology.

Councilman Mecca announced that the Rye Fire Department will be having a volunteer event on Sunday, April 23, 2017 between 10:00 A.M. and 2:00 P.M. at the Locust Avenue Firehouse.

Councilwoman Tagger-Epstein stated that the Jay Heritage Center would be holding its free daffodil event on April 20, 2017 from 1:00-4:00 P.M., followed by a fundraising event, sponsored by Wine at 5. Councilwoman Tagger-Epstein also announced that the Rye Sustainability Committee and CCAC planted its first tree on Purchase Street from the tree fund prior to the City Council meeting on April 19, 2017. She also encouraged citizens to support the Healthy Yard initiative by displaying the Healthy Yard lawn sign, designed by Liv McNamara.

12. **Resolution to transfer funds donated to the *Branching out for Rye Campaign* to the General Fund, Shade Tree cost center.**
Roll Call.

This item was taken out of order. Sarah Goddard, Sustainability Committee Chair, stated that the first tree from the Tree Fund was planted on Purchase Street. The funding

collected would need to be transferred to the DPW budget to maintain the plantings going forward. Ms. Goddard thanked the Girl Scouts who were also present at the tree planting, who helped with fundraising under the direction of Andrea Alban-Davies.

Councilwoman Tagger-Epstein made a motion, seconded by Councilwoman Killian, to adopt the following resolution:

WHEREAS, the Branching out for Rye Campaign raised funds to purchase and plant trees for the City of Rye; and

WHEREAS, due to the generosity of campaign donors, an amount of \$3,750.00 was raised during the campaign; and

WHEREAS, the donations must be transferred into the project account as preparations are made to have the trees purchased and planted; be it therefore

RESOLVED, that the City Comptroller is authorized to transfer the amount of \$3,750.00 from the General Fund account to the General Fund Account "Shade Tree Project" for the purchase of trees using funds donated.

ROLL CALL

AYES: Mayor Sack, Councilmembers Bucci, Hurd, Killian, Mecca, and Tagger-Epstein
NAYS: None
ABSENT: Councilman McCartney

4. Consideration of the election of the Chiefs of the Rye Fire Department.

This item was tabled until the May 3, 2017 meeting.

5. Approval of the election of one new member to the Rye Fire Department.

Councilman Mecca made a motion, seconded by Mayor Sack and unanimously carried, to approve the election of Kevin Ramsey to the Milton Point Engine and Hose Company.

10. Residents may be heard on matters for Council consideration that do not appear on the agenda.

Gerry Seitz, 141 Kirby Lane, made a statement to the Council. He referenced the resolution on immigration status which will be on the agenda for the May 3, 2017 meeting and felt that the resolution as written would be problematic for the City of Rye Police Department. He also expressed concern over the increase in taxes and asked the Council to

consider alternatives to control the increase going forward, such as an increase in sales tax and revenue increases.

13. Resolution to authorize expenditure of Police donations reserved for Police Programs for the purchase of items for the Adopt-a-School Program.

Roll Call.

This item was taken out of order. Acting City Manager Militana highlighted the following points:

- The Rotary Club donated \$1,500 to the Rye Police Department for their continuing efforts in the Police Department's Adopt-a-School Program (City Council approved at 12/21/16 Council Meeting)
- Eight designated police officers who volunteered to participate in this program educating students about many topics such as: Bullying, Dangers of Texting and Driving, Dangers of Drinking and Driving,
- Dangers of Drugs, How to deal with Peer Pressure, bike safety
- These funds will be used to purchase items to be used with the students

Councilwoman Tagger-Epstein made a motion, seconded by Councilwoman Bucci, to adopt the following resolution:

WHEREAS, the City Manager and the Public Safety Commissioner have approved a request of the Rye Police Department to purchase items to be used in the Adopt-a-School Program in the amount of \$294.54 with funds available in the police donations account, and;

WHEREAS, sufficient funds exist in the police donations account to comply with the aforementioned request of the Rye Police Department; now therefore be it;

RESOLVED, that \$294.54 be appropriated from the police donations account to increase 2017 General Fund Donations Reserved for Police programs.

ROLL CALL

AYES: Mayor Sack, Councilmembers Bucci, Hurd, Killian, Mecca, and Tagger-Epstein
NAYS: None
ABSENT: Councilman McCartney

14. Resolution ratifying the appointment of one member to the Emergency Medical Services Committee for a three-year term expiring on June 30, 2020.

This item was taken out of order. Acting City Manager Militana stated the following points:

- The EMS Committee is made up of members from City of Rye, Village of Rye Brook and Village of Port Chester
- Meetings are attended by representatives of the three communities including the City Manager and the City Council Liaison Councilwoman Tagger-Epstein
- Bart DiNardo is a long term volunteer and member and is willing to continue his service

Mayor Sack made a motion, seconded by Councilwoman Killian and unanimously carried, to appoint Mr. Bart DiNardo City of Rye Community Representative, to the Emergency Medical Services Committee for a three-year term expiring on June 30, 2020.

15. Consideration of the proposed changes and additions to the Rules and Regulations of the City of Rye Police Department:

- General Order #102.8 regarding the operational guidelines of the Bicycle Patrol Unit
- General Order #103.7 regarding the carry and use of Oleoresin Capsicum (O.C.) Spray
- General Order #103.10 regarding the training, deployment, use and aftercare of Conducted Electrical Weapons
- General Order #115.3 regarding the procedures for the training of new police officers during post-academy training
- General Order #116.2 regarding promotions and appointments
- General Order #118.2 regarding a new performance tracking software program entitled Guardian Tracking
- General Order #118.10 establishing uniform guidelines on Training and Records
- General Order #120.10 establishing administrative and operational procedures to regulate the collection, reporting, processing and dissemination of intelligence information.

This item was taken out of order. Acting City Manager Militana explained that Public Safety Commissioner Corcoran has made it a priority to strengthen department measures by clarifying the language of various general orders.

Councilwoman Tagger-Epstein made a motion, seconded by Councilman Mecca and unanimously carried by the Council, to approve the proposed changes to the following General Orders:

- General Order #102.8 regarding the operational guidelines of the Bicycle Patrol Unit

- General Order #103.7 regarding the carry and use of Oleoresin Capsicum (O.C.) Spray
- General Order #103.10 regarding the training, deployment, use and aftercare of Conducted Electrical Weapons
- General Order #115.3 regarding the procedures for the training of new police officers during post-academy training
- General Order #116.2 regarding promotions and appointments
- General Order #118.2 regarding a new performance tracking software program entitled Guardian Tracking
- General Order #118.10 establishing uniform guidelines on Training and Records
- General Order #120.10 establishing administrative and operational procedures to regulate the collection, reporting, processing and dissemination of intelligence information.

6. Issues Update/Old Business.

Corporation Counsel Wilson updated the Council on the Starwood project and the Village of Port Chester. She stated she was happy to report that there are two separate pending agreements that should have been made, which would hopefully strengthen the City's position with the proposed development. With respect to the agreement between Starwood and the City of Rye, there are two major components: first, a three-tiered payment for traffic mitigation/ calming measures, and second, that in the case that an Article 78 is filed, the payments would not be received. She further explained that the second proposed agreement, between the City of Rye and the Village of Port Chester, focuses more on the dedicated turn lanes at Boston Post Road. The agreements contemplate the measures at which the driveway improvements would be added back into the project.

Mayor Sack thanked Corporation Counsel Wilson. He stated that the Council's focus has always been traffic mitigation for the adjacent Rye Park neighborhood. He thanked Councilman McCartney and Councilwoman Hurd for their work on this issue with the Litigation Committee. With these pending agreements, an Article 78 could be avoided. Councilwoman Hurd added that with the removal of the proposed turn lanes, these agreements would be very helpful.

Councilwoman Killian confirmed that the agreements would survive any subsequent owners of the property.

Mayor Sack made a motion, seconded by Councilwoman Hurd, to authorize the city manager to enter into these two agreements and adopt the following resolution:

RESOLVED, that the City Manager is herein authorized to enter into an agreement with PC 406 BPR, LLC and PC 999 High Street regarding the proposed development at the former United Hospital site; and now therefore be it

RESOLVED, that the City Manager is authorized to enter into an agreement with the Village of Port Chester regarding the proposed development at the former United Hospital site.

ROLL CALL

AYES: Mayor Sack, Councilmembers Bucci, Hurd, Killian, Mecca, and Tagger-Epstein
NAYS: None
ABSENT: Councilman McCartney

Mayor Sack then made a motion, seconded by Councilman Mecca, to adjourn into Executive Session to discuss pending litigation matters with the City's attorney at 8:30 P.M. The Council adjourned Executive Session at 8:45 and re-entered the public meeting.

Mayor Sack stated that the Council must make a decision with respect to litigation with Playland, as an appeal filing would be due on Monday, April 24, 2017. He said that the Council was not ready to make a decision at the meeting, but anticipated that a vote on a course of action may occur at the next scheduled meeting on April 22, 2017.

7. Continuation of the Public Hearing to amend the Rye City Code: (a) local law Chapter 133, "Noise", by amending Section §133-4, "Points and method for measuring intensity of sound" to regulate placement and noise of telecommunication devices; (b) local law Chapter 167, "Streets and Sidewalks", to add a new 196, "Wireless Telecommunications Facilities", by amending Sections §196-3 through §196-8, §196-14, §196-17, §196-18, and §196-22 to regulate wireless facilities and structures regarding size, visual impact and permit process.

Councilwoman Hurd made a motion, seconded by Councilman Mecca and unanimously carried, to adjourn this matter to May 17, 2017.

8. Continuation of the Public Hearing regarding the request submitted by Crown Castle to amend their agreement with the City and for the installation of additional locations to their existing wireless telecommunications located in the City of Rye.

Marie Johnston, 556 Milton Road, addressed the Council. She stated that this is not the time to open the right of ways for current DAS nodes, as electronics equipment will be evolving.

Matt Fahey, 36 Franklin Avenue, addressed the Council. He thanked the Council for their commitment to the issue. He stated the Crown proposal should be denied. He felt that Crown had not undergone the appropriate application process, nor had provided alternatives. He mentioned that many residents had spoken against the project.

Chris Fisher, Cuddy & Feder, on behalf of Crown Castle, thanked the Mayor and Council for their consideration over the past year. He stated that one item of data and request, the 700 mHz data, was made available to the City. He said that the application had four tolling extensions and Crown had asked for any updated engineering reports throughout that process. He stated that any new information/report that was procured, specifically referring to a report by Engineer Ron Graiff, may go against the tolling agreement. He also stated that Crown had not been given Mr. Afflerbach's recent report. He discussed "Plan C" that was provided to the Council, population density, and nodes. Mr. Fisher stated he had provided correspondence to the City prior to the meeting, summarizing the questions presented and alternatives. He stated that Crown provided comments about competitors and their equipment allowed within the right of way in the City of Rye. He stated that there was a site visit to the Rye Golf Club by Crown and comments on that site were provided to the City. He stated that Crown believed it was appropriate for the Council to issue a negative declaration under SEQRA.

Mayor Sack thanked Mr. Fisher for his comments.

Joe Van Eaton, Best Best & Krieger on behalf of the City, stated that there were several issues before the Council. Firstly, there was a pending SEQRA determination. Second, there was a question on approving or denying the actual application and what has been presented so far. He clarified that the City's understanding of the tolling agreement would be to submit any reports that existed on April 12, 2017 had the City had them on that date. Unfortunately, the 700 mHz data was only received by Crown Castle on April 10, 2017. He clarified that Mr. Graiff, who submitted a second opinion report to the City, was hired by Best Best & Krieger, on the code amendment issues. Mr. Van Eaton acknowledged that there was information received by Crown prior to the meeting. He clarified a technical misunderstanding between Mr. Afflerbach and Crown Castle concerning the 700 mHz data; Mr. Afflerbach stated to Mr. Van Eaton that the 700 mHz data was vital. The City's consultants stated that all information that was requested was relevant to a determination. He said that the right-of-way use agreement does allow the City to reasonably review the plan and should not have more facilities than necessary to preserve the right-of-way. Mr. Van Eaton then said that the fact that a permit is signed for a structure in the right-of-way does not necessarily translate to full compliance with zoning. He stated that Chapter 196 applied to the application.

Mr. Fisher, Cuddy & Feder, responded to Mr. Van Eaton's comments. He stated surprise that the City's position was that Chapter 196 applies in this instance. He asked when Mr. Graiff was retained.

Mayor Sack asked if there was any comment on the report from Mr. Graiff now that Crown and its representatives had reviewed the report.

Mr. Van Eaton responded that Mr. Graiff had been retained on April 7, 2017.

Mr. Fisher stated that the reason that they believe it was a breach of the tolling extension because of Crown was owed more administrative due process.

Mayor Sack asked what the prejudice was with respect to the tolling agreement. Mr. Fisher responded that the City had retained Mr. Afflerbach in August 2016 and he had asked that any report be given to Crown Castle.

Esme Lombard, Crown Castle, stated that on a conference call on October 25, 2016, Mr. Afflerbach stated he did not need the 700 mHz data. Mayor Sack responded that on the contrary, the City Council asked for that data many times.

Mayor Sack stated that to avoid any prejudice claimed by Crown Castle, he and the Council would give Crown more time to respond, should they want it.

Mr. Fisher stated the applicant did not want more time.

Mr. Van Eaton responded that there had been a misunderstanding and that Mr. Afflerbach always wanted to see the 700 mHz data. He said he was troubled by the idea that there was a claim of prejudice, yet Crown stated it did not need more time to respond. Mr. Van Eaton stated that his recommendation would be that if Crown was claiming prejudice, an extension should be given.

Mr. Van Eaton asked if Crown was claiming prejudice.

Mayor Sack made a motion, seconded by Councilman Mecca, to adjourn into executive session to discussion attorney client privileged matters.

Mr. Van Eaton stated that the City does not agree that there was a violation of the tolling agreement. The tolling agreement by law gives a date that the shot clock applies. Nonetheless, out of a great deal of respect for Crown Castle, the City has offered to extend the time.

Mayor Sack announced that after one year of deliberation, at 10:03 PM on April 19, 2017, the public hearing on Crown Castle's application would end.

Councilwoman Hurd made a motion, seconded by Councilwoman Tagger-Epstein, to close the public hearing.

ROLL CALL

AYES: Mayor Sack, Councilmembers Bucci, Hurd, Killian, Mecca, and Tagger-Epstein
NAYS: None
ABSENT: Councilman McCartney

Corporation Counsel Wilson stated that the City had previously declared itself lead agency with respect to SEQRA. She read the following proposed Part II of the Environmental Assessment Form:

1. Impact on Land – NO
2. Impact on Geological Features – NO
3. Impacts on Surface Water – NO
4. Impact on Ground Water – NO
5. Impact on flooding – NO
6. Impacts on Air – NO
7. Impact on Plants and Animals – NO
8. Impact on Agricultural Resources – NO
9. Impact on Aesthetic Resources – YES
10. Impact on Historic and Archeological Resources – YES
11. Impact on Open Space and Recreation – NO
12. Impact on Critical Environmental Areas – NO
13. Impact on Transportation – NO
14. Impact on Energy – YES
15. Impact on Noise, Odor and Light – YES
16. Impact on Human Health – NO
17. Consistency with Community Plans – NO
18. Consistency with Community Character – YES

Corporation Counsel Wilson stated that because there were some areas marked “YES” on Part II of the EAF, the City must move onto Part III. She stated that Part III was marked as an Unlisted action and read the following:

“Crown Castle's proposal to add approximately 65 additional dual antennae system ("DAS"), including the 2 and/or 3 ion box, accessory meters, and pole top/communication zone antennae, within the City's publicly owned right-of-way may have significant adverse environmental impacts as they relate to aesthetic resources, historic resources, noise and the existing community character. The visual and aesthetic impact of placing ion boxes that could be 7 cubic feet in size approximately 8 feet off the ground are highly visible to the average person. In addition, the significant increase in the number of proposed DAS throughout the entire City, along residential streets directly in front of residential structures, near parks and schools, and the City's locally designated historic districts and near landmarked structures may alter the City of Rye's existing residential landscape. Currently, there are no other structures at approximately 8 feet above street level and located every 500 feet in the City's right-of-way. In addition, all of the ion boxes (single, dual or triple ions) may not meet the City's existing noise ordinance when measured at the appropriate distance.”

Councilwoman Hurd made a motion, seconded by Councilwoman Tagger-Epstein, to adopt the following resolution:

RESOLUTION
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RYE MAKING A
POSITIVE DETERMINATION OF SIGNIFICANCE UNDER THE STATE

**ENVIRONMENTAL QUALITY REVIEW ACT RELATING TO CROWN CASTLE'S
REQUEST TO MODIFY THE EXISTING RIGHT OF WAY USE AGREEMENT**

Project: Modification of the Existing Right of Way Use Agreement Between the City of Rye and Crown Castle.

Lead Agency: City Council of the City of Rye, 1051 Boston Post Road, Rye, New York 10580

Date: April 19, 2017

Type Of Action: Unlisted

Description Of Proposal: Deployment of additional 64 dual antennae system nodes, with the accessory equipment boxes, meters and antennae throughout the City of Rye in its public right of way.

Reasons Supporting This Determination:

Based upon a review of the applicant's submitted Full Environmental Assessment Form and all other application materials that were prepared for this action, the Lead Agency has determined that the proposed action may have the following significant adverse impacts:

1. The potential for significant aesthetic/design/visual resource impacts and neighborhood character impacts.
2. The potential for significant impacts related to noise associated with the two and three ion boxes.
3. The potential for significant impacts to the community character and locally designated historic districts and landmarks.

Scoping Information:

Scoping of the issues to be contained in the EIS will be conducted by the Lead Agency. Once a draft scoping document is prepared, a public scoping session will be noticed and held.

Contact Person:

Kristen Wilson, Corporation Counsel
City of Rye
1051 Boston Post Road
Rye, New York 10580
kwilson@ryeny.gov

Prior to the vote, Mayor Sack asked what the impact would be if the Council were to taken a vote on this proposed positive declaration. Corporation Counsel Wilson responded that it sets the stage for continuing on with the environmental review process. She stated that

depending on how the parties would want to proceed, either party would take on the task of putting together the environmental impact statement.

ROLL CALL

AYES: Mayor Sack, Councilmembers Bucci, Hurd, Killian, Mecca, and Tagger-Epstein
NAYS: None
ABSENT: Councilman McCartney

9. Consideration of a resolution in connection with the request submitted by Crown Castle to amend the Right of Way Use Agreement and the installation of additional locations to their existing wireless telecommunications located in the City of Rye.

Mayor Sack stated that the Council had a recommendation by staff and a draft resolution. The Council has taken action on the SEQRA issues, but the resolution language concerning the application should be certain prior to being adopted by the Council. A vote will be taken at that time. Mayor Sack made a motion, seconded by Councilwoman Hurd and unanimously carried, to move the vote to April 22, 2017.

16. Miscellaneous communications and reports.

Councilwoman Killian announced that at the Rye Town Park meeting on April 18, 2017 the NYU Capstone team presented their recommendations for the development of Rye Town Park.

17. New Business.

Mayor Sack stated that with regard to the City Council's August 2017 meetings being potentially problematic, he would recommend canceling those currently scheduled. Mayor Sack made a motion, seconded by Councilman Mecca and unanimously carried, to cancel the City Council's 2017 August meetings.

18. Adjournment.

There being no further business to discuss, Councilman Mecca made a motion, seconded by Councilwoman Bucci and unanimously carried, to adjourn the regular meeting of the City Council at 10:20 P.M.

Respectfully submitted,

Carolyn E. D'Andrea
City Clerk